

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**U.S. NAVY SEALs 1-26;**

**U.S. NAVY SPECIAL WARFARE  
COMBATANT CRAFT CREWMEN 1-5;**

**U.S. NAVY EXPLOSIVE ORDNANCE  
DISPOSAL TECHNICIAN 1; and**

**U.S. NAVY DIVERS 1-3,**

Plaintiffs,

v.

**Case No. 4:21-cv-01236-O**

**JOSEPH R. BIDEN, JR.**, in his official capacity as President of the United States of America; **LLOYD J. AUSTIN, III**, individually and in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, individually and in his official capacity as United States Secretary of the Navy,

Defendants.

**MOTION OF NINE U.S. SENATORS AND THIRTY-EIGHT U.S. REPRESENTATIVES  
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS’  
MOTION FOR A PRELIMINARY INJUNCTION**

**TO THE HONORABLE REED O’CONNOR, UNITED STATES DISTRICT JUDGE:**

Proposed *amici*, nine United States Senators and thirty-eight United States Representatives, respectfully request leave to file the attached *amicus curiae* brief in support of plaintiff’s motion for an expedited preliminary injunction. *See* Local Rule 7.2(b) (“An amicus brief may not be filed without leave of the presiding judge.”). Pursuant to Local Rule 7.1(a), proposed *amici* state that they contacted counsel for both Plaintiffs and Defendants and neither opposed the filing of the said

*amicus curiae* brief. Pursuant to Local Rule 7.2(b), the attached brief specifically sets forth the interests of the *amici* in the outcome of the litigation.

In support of this motion, proposed *amici* state as follows:

1. Proposed *amici* are United States Senators and Members of the United States House of Representatives. *Amici* from the U.S. Senate include: Sen. Ted Cruz (TX); Sen. Rick Scott (FL); Sen. Mike Lee (UT); Sen. James M. Inhofe (OK); Sen. James Lankford (OK); Sen. Steve Daines (MT); Sen. Roger F. Wicker (MS); Sen. Mike Braun (IN); and Sen. Roger Marshall (KS). *Amici* from the U.S. House of Representative include: Rep. Mike Johnson (LA-04); Rick Allen (GA-12); Rep. Brian Babin, D.D.S. (TX-36); Rep. Jack Bergman (MI-01); Rep. Andy Biggs (AZ-05); Rep. Dan Bishop (NC-09); Rep. Lauren Boebert (CO-03); Rep. Mo Brooks (AL-05); Rep. Kat Cammack (FL-03); Rep. Andrew Clyde (GA-09); Rep. Warren Davidson (OH-08); Rep. Rodney Davis (IL-13); Rep. Jeff Duncan (SC-03); Rep. Bob Gibbs (OH-07); Rep. Louie Gohmert (TX-01); Rep. Bob Good (VA-05); Rep. Paul Gosar, D.D.S. (AZ-04); Rep. Michael Guest (MS-03); Rep. Andy Harris, M.D. (MD-01); Rep. Vicky Hartzler (MO-04); Rep. Jody Hice (GA-10); Rep. Clay Higgins (LA-03); Rep. Darrell Issa (CA-50); Rep. Ronny L. Jackson (TX-13); Rep. Doug LaMalfa (CA-01); Rep. Doug Lamborn (CO-05); Rep. Billy Long (MO-07); Rep. Thomas Massie (KY-04); Rep. Brian Mast (FL-18); Rep. Mary Miller (IL-15); Rep. Gregory F. Murphy, M.D. (NC-03); Rep. Ralph Norman (SC-05); Rep. Scott Perry (PA-10); Rep. Matthew Rosendale, Sr. (MT-at-large); Rep. Chip Roy (TX-21); Rep. W. Gregory Steube (FL-17); Rep. Randy Weber (TX-29); and Rep. Daniel Webster (FL-11).

2. Proposed *amici* should be granted leave to file the accompanying brief for three reasons. *First*, as members of Congress, proposed *amici* have a strong interest in ensuring laws enacted by Congress—including, as relevant here, the Religious Freedom Restoration Act (“RFRA”)—are

interpreted in a manner that is consistent with their text and history. *Second*, proposed *amici* likewise have a strong interest in ensuring that the First Amendment, which is RFRA's constitutional backdrop, is enforced with vigor. *Third*, members of Congress support and defend the Constitution of the United States against all enemies, foreign and domestic. This requires members to ensure that America's military is in a position to fully and robustly defend our national security.

3. There is no Federal Rule of Civil Procedure that controls motions for leave to appear as *amicus curiae* in federal district court. "The Court has discretion to consider amicus briefing where the proffered information is timely and useful or otherwise necessary to the administration of justice." *United States ex rel. Long v. GSD & M Idea City LLC*, No. 3:11-CV-1154-O, 2014 WL 11321670, at \*4 (N.D. Tex. Aug. 8, 2014) (quoting *Does 1–7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 738 n.2 (W.D. Tex. 2007)); *see also Club v. Fed. Emergency Mgmt. Agency*, No. CIV.A. H-07-0608, 2007 WL 3472851, at \*1 (S.D. Tex. Nov. 14, 2007) (quoting *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995)); *Ryan v. Cmty. Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (stating amicus briefs should be allowed "when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide") (citation omitted).

### CONCLUSION

For these reasons, proposed *amici* respectfully request that they be granted leave to file the attached *amicus curiae* brief.

December 17, 2021

Respectfully submitted,

/s/ Thomas S. Brandon, Jr.

Thomas S. Brandon, Jr.

State Bar Number 02881400

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**ATTORNEYS FOR PROPOSED AMICI, NINE U.S.**

**SENATORS AND THIRTY-EIGHT U.S.**

**REPRESENTATIVES**

**CERTIFICATE OF CONFERENCE**

I certify that on December 17, 2021, I conducted a telephone conference concerning filing the Amicus Curiae Brief which is attached to this Motion in accordance with Local Rule 7.2(b) with one of the attorneys for the Defendants, namely, Courtney D. Enlow. Pursuant to her request I emailed her and requested to be notified whether the Defendants oppose the filing of the attached Amicus Brief. Opposing counsel then provided an email that the Defendants are unopposed to the filing of the said Amicus Brief.

/s/ Thomas S. Brandon, Jr.

Thomas S. Brandon, Jr.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served, pursuant to the Federal Rules of Civil Procedure, on all counsel of record appearing herein via ECF on this the 17<sup>th</sup> day of December, 2021 by the filing of this pleading with the Clerk of Court for the U.S. District Court for the Northern District of Texas using the Court's ECF system.

/s/ Thomas S. Brandon, Jr.

Thomas S. Brandon, Jr.